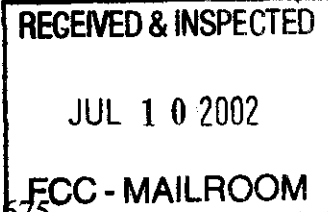


## Federal Communications Commission

DA 02-1588

Before the  
Federal Communications Commission  
Washington, DC 20554



In the Matter of	)	
	)	
Requests for Waiver by	)	
	)	
Deer Lodge Elementary Schools	)	File No. SLD-331675
Deer Lodge, Montana	)	
	)	
Holy Ghost Catholic School	)	File No. SLD-280798
Marksville, Louisiana	)	
	)	
Seton Catholic Central School	)	File No. SLD-327224
Plattsburgh, New York	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45 ✓
Universal Service	)	
	)	
Changes to the Board of Directors of the	)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.	)	

## ORDER

Adopted: July 3, 2002

Released: July 5, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. Before the Telecommunications Access Policy Division are requests to waive FCC Form 471 filing deadlines established by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) for discount applications under the schools and libraries universal service mechanism.<sup>1</sup> The requests were filed by Deer Lodge Elementary Schools (Deer Lodge), Deer Lodge, Montana; Holy Ghost Catholic School (Holy Ghost), Marksville, Louisiana; and Seton Catholic Central School (Seton), Plattsburgh, New York.<sup>2</sup> For the reasons set forth below, we deny the requests.

<sup>1</sup> 47 C.F.R. §§ 54.502, 54.503.

<sup>2</sup> Letter from Shad Bailey, Deer Lodge Elementary Schools, to the Federal Communications Commission, filed April 10, 2002 (requesting waiver of Funding Year 5 deadline) (Deer Lodge Request). Letter from Connie Richard, Holy Ghost Catholic School, to the Federal Communications Commission, filed February 28, 2002 (requesting waiver of Funding Year 4 deadline) (Holy Ghost Request). Letter from Donald J. Recore, Seton Catholic Central School, to the Federal Communications Commission, filed March 6, 2002 (requesting waiver of Funding Year 5 deadline) (Seton Request). Deer Lodge appealed directly to the Commission from SLD's initial decision, while Holy Ghost and Seton first appealed to SLD, and now appeal to the Commission. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

2. In each case, the applicant concedes it missed the SLD deadline for filing its FCC Form 471, and requests waiver of this deadline on account of the acts or omissions of one or more of its employees. In Deer Lodge, employees had difficulty working with Internet connections and the SLD website.<sup>3</sup> In Holy Ghost, the employee did not realize that a multi-year service contract had to be reauthorized by SLD each year.<sup>4</sup> In Seton, the responsible employee was unexpectedly hospitalized.<sup>5</sup> Each applicant also cites its financial need as a special circumstance of its appeal.<sup>6</sup>

3. The Commission may waive provisions of its rules, but only where special circumstances warrant a deviation from the general rule, and strict compliance with the rule would be inconsistent with the public interest.<sup>7</sup> Applicants are held to a high standard for waivers.<sup>8</sup> They are responsible for knowing the relevant rules of the program, including the published FCC Form 471 instructions, which state that details of the application filing requirements and deadlines are published on the SLD website.<sup>9</sup> Applicants are further responsible for the timely submission of those applications.<sup>10</sup>

4. Neither illness nor a misunderstanding of the program's requirements are grounds for a waiver, nor is lack of awareness of the website or of the opening and closing of the filing window.<sup>11</sup> Lack of Internet access does not provide grounds for relief, since any potential applicant can obtain forms and opening and closing dates for the application window by calling

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<sup>3</sup> Deer Lodge Request at 2, Attachment (Letter from Joe Brott, Powell County High School, to Appeals Committee, dated March 26, 2002).

<sup>4</sup> Holy Ghost Request at 1.

<sup>5</sup> Seton Request at 1.

<sup>6</sup> Deer Lodge says that its appeal is really on behalf of its students, who should not have to suffer because of a mistake by the school. Deer Lodge Request at 2. Holy Ghost states that the school "is greatly in need of help" from the Universal Service support mechanism. Holy Ghost Request at 3. Seton states that its school is small and has "no other outside funding." Seton Request at 1.

<sup>7</sup> 47 C.F.R. § 1.3; *see also* *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

<sup>8</sup> *Request for Waiver by Dermott Special School District, et al, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-252777, CC Docket Nos. 96-45 and 97-21, Order, DA 02-643 (Com. Car. Bur. rel. Mar. 19, 2002), para. 4 (*Dermott*).

<sup>9</sup> *Request for Waiver by Springdale Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-195867, CC Dockets No. 96-45 and 97-21, Order, DA 02-433, paras. 6-7 (Com. Car. Bur. rel. February 26, 2002); *see also* Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (October 2000) at 4; and SLD website, Form 471 Minimum Processing Standards and Filing Requirements for FY 4 <<http://www.sl.universalservice.org/reference/471mps.asp>>.

<sup>10</sup> *See Request for Review by Southern Adirondack Library System, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-267054, CC Dockets No. 96-45 and 97-21, Order, DA 02-745, para. 10 (Com. Car. Bur. rel. April 4, 2002).

<sup>11</sup> *Dermott* at 3.

SLD's Client Service Bureau at 888-203-0733.<sup>12</sup> The assertion of financial need does not meet the requirement of special circumstances that warrant a waiver of the Commission's rules.<sup>13</sup>

5. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, and 54.722(a), that the Waiver Requests filed by Deer Lodge, Holy Ghost, and Seton on April 10, February 28, and March 6, 2002, respectively, ARE DENIED.

## FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert  
Deputy Chief, Telecommunications Access Policy Division  
Wireline Competition Bureau

<sup>12</sup> Form 471 Instructions at 5 ("Assistance in Completing This Form").

<sup>13</sup> See *Request for Review by Northern Waters Library Service, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-183124, CC Docket Nos. 96-45 and 97-21, Order, DA 02-227, para. 7 (Com. Car. Bur. rel. Jan. 30, 2002) (denying a request for waiver of the Commission's rules based on the assertion that denial would cause the applicant hardship); *Request for Review by Lansingburgh Central School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-109845, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 6999 (Com. Car. Bur. 1999) ("To simply advert...to its limited resources and the needs of its students, does not distinguish its situation from other applications the SLD must process each funding year in accordance with its filing deadlines.").